IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CIVIL APPELLATE JURISDICTION.

WRIT PETITION NO. 4000 OF 2005.

Kaivalyadham Shriman Madhava Yoga
Mandir Samiti, Lonavala, Dist. Pune..... ..... Petitioner.

Versus

Kaivalyadham Employees Association,
C/o Dr.J.M.Bhagwat,
3, Gulmohar Apartment,
Bhangwadi, Lonavala, Dist. Pune..... .....
Respondent.

Smt.Meena H. Doshi, Adv. For the petitioner.

Shri Nitin A. Kulkarni, Adv. For the respondent.

CORAM: A.P.DESHPANDE J,

27th & 30th April, 2007.

ORAL JUDGMENT:

The petitioner is a Society registered under the Societies Registration Act so also is a public trust governed and regulated by the provisions of Bombay Public Trust Act. According to the petitioner the petitioner primarily carries on research and allied work in the field of Yoga. The petitioner is a recipient of grants of Central Government so also the State Government. The petitioner claims that it has been receiving grants from the Central Government since prior to independence for promoting scientific research in Yoga. The activities

of the petitioner are regulated by articles of association framed by it. The apex body of the petitioner is known as the governing body and as the petitioner is receiving grants from the Central Government two members are nominated by the Central Government on the governing body of the petitioner since last many years. It is also the case of the petitioner that its work and activities are scrutinized and checked by Review Committee appointed by the Central Government and the Review Committee is directly under the control of Ministry of Education, Government of India. The petitioner also submits that the Review Committee makes various suggestions with a view to properly plan the activities of the petitioner for next five years.

2. The petitioner has five departments through which it carries on its activities and the said departments are (i) Scientific Research Department; (ii) Philosophy Laboratory Research Department; (iii) G.S.College of Yoga and Cultural Synthesis; (iv) Centralized Administrative Department and (v) SADT Gupta Yogic Hospital. According to the petitioner barring Yogic hospital all other departments are recipients of grants from the Government. In the backdrop of above referred facts it is contended by the petitioner that the Central Government has control over the activities of the petitioner and the reference made by the State Government in relation to the dispute of its employees to the Industrial Tribunal is incompetent. To

substantiate the said submission the petitioner also pointed out that the accounts of the petitioner are audited by Central Auditor General's Office, Government of India. It is also contended that the Government has control and supervision over the activities of the petitioner and the petitioner is recognized by All India Institute of Higher Education so also department of Scientific and Industrial Research under the scheme of Scientific and Industrial Research Organization.

3. The respondent is trade union registered under the Trade Unions Act which represents the employees working under the petitioner. Some of the employees came to be terminated from services by the petitioner and hence dispute came to be raised by the respondent-union and the said dispute came to be referred by the State Government to the Industrial Tribunal. The respondent-union contended before the Tribunal that the termination of the employees effected by the petitioner is mala fide and has been resorted to on account of various complaints made by workmen/union to the Central Government touching the administration of the petitioner. The respondent had submitted before the Tribunal that the petitioner was acting illegally in as much as it did not implement the reservation policy and was acting arbitrarily in extending the service tenure of one Shri Tiwari despite he having attained age of superannuation. Taking serious view of the complaints made by the workmen, it is claimed by

the respondent, before the Tribunal that the Central Government directed inquiries to be made and grants admissible to the petitioner were withheld and for that reason the services of employees were terminated mala fide. The Tribunal accepting the case of the respondent, that the termination of the employees was illegal, has allowed the reference in relation to some of the employees and aggrieved by the said award passed by the Industrial Tribunal the present writ petition has been filed.

4. The learned counsel Smt.Meena Doshi raised the following objections/points to the award passed by the Tribunal and urged that the award be quashed and set aside.

1) It is contended that the petitioner is not an industry within the meaning of definition of word “industry” under section 2(j) of the Industrial Disputes Act, 1947.

2) The reference made by the State Government was itself incompetent in as much as the appropriate Government in relation to the petitioner is the Central Government. The learned counsel for the petitioner places reliance on definition of the “appropriate Government” in section 2(a) of the Industrial Disputes Act 1947 and contended that assuming the petitioner to be an industry, as the industrial dispute is in relation to an

industry carried on under the authority of Central Government the appropriate Government would be the Central Government.

3) The retrenchment of the employees is in compliance with Rule 81 of the Industrial Disputes (Bombay) Rules, 1957 and the same is legal and proper. It is also submitted that on account of financial hardship the decision to retrench the employees had to be resorted to and the retrenchment is not mala fide as is contended by the respondent.

4) The respondent did not have subsisting and valid registration when the dispute was raised and as such the dispute was incompetent. The submission is that though the Union had registration prior in point of time, the same was withdrawn/canceled at the relevant point of time i.e. when the dispute was raised.

5) Lastly it is submitted that the retrenchment of the employees is in good faith and not a mala fide action.

It will not be out of place to state at this juncture that the Industrial Tribunal had rejected the above referred objections and answered the reference in favour of the respondents.

5. **As to Point No.1:** The word “industry” is defined by section 2(j) of the Industrial Disputes Act which reads thus:

"2(j) "industry" means any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft, or industrial occupation or avocation of workmen."

Before the Tribunal both the parties have placed on record number of documents and also led oral evidence. Before I proceed to consider the evidence touching the aspect as to whether petitioner is an industry, it would be apt to point out that the Tribunal has held that the petitioner is an industry as it satisfies the triple test as laid down by the Supreme Court of India in the case of ***Bangalore Water Supply & Sewerage Board, Etc., Etc.,*** V/s ***A.Rajappa and Others, Etc., Etc.,*** 1978 (1) LLJ 349 equivalent to AIR 1978 SC 548. The triple test laid down requires satisfying the following three conditions viz.

i) a systematic activity must be carried on,

ii) there must be cooperation between the employer and employee and

iii) production and/or distribution of goods and services calculated to satisfy human wants and wishes.

The Supreme Court has laid down in the said judgment that when the triple test is satisfied, prima facie, it is an industry. Profit-motive has been held to be not relevant for deciding the question. According to the petitioner the Supreme Court has not authoritatively decided the

question in the case of ***Bangalore Water Supply & Sewerage Board,*** (supra) but it is an expression of tentative opinion formed by the Supreme Court. To substantiate the submission reliance is sought to be placed on latest judgment of the Supreme Court in the case of ***Physical Research Laboratory*** V/s ***K.G.Sharma,*** 1997 LLR 401 equivalent to AIR 1997 SC 1855. Leaving that contention at that I turn to the evidence touching the aspect as to whether the petitioner is an industry or otherwise. The aims and objects of the petitioner are set out in the memorandum of association. Briefly stated it provides for establishment of colleges, yoga hospitals, research in scientific yoga, acceptance of grants, gifts, etc. to purchase or to take on lease land, building, playgrounds, to transfer, sell, mortgage or dispose of property and to deal with property in any other manner and to spend money on various activities of the Committee. With the help of evidence on record which is in the nature of prospectus of the college and pamphlets distributed by the hospital and health care center administered by the petitioner, the Tribunal has noticed that the petitioner has been charging registration fees, tuition fees and fees for participation in shibirs, seminars and health care centers. Different charges are prescribed for Indian citizens and Foreigners. Fees/charges are levied depending upon the nature of participation and the benefits extended. A given sum of amount is charged

depending upon the facilities provided. Persons/patients admitted to hospital are charged per day, Indians in rupees and Foreigners in dollars. After appreciating the evidence on record the Tribunal has found that not only the petitioner is carrying on systematic activity but it satisfies the triple test and the activities of the petitioner are also profit oriented and intended to make money. It is crystal clear from the evidence on record and it has been rightly so held by the Industrial Tribunal that all the departments/units of the petitioner are an inter dependent. Considering the evidence on record the Industrial Tribunal has recorded the finding of fact that the results of the research activities are periodically published and the petitioner receives monitory benefits there from. The petitioner has been found generating money from its systematic activities, though the learned counsel for the petitioner has emphatically tried to contend that yogic activities are only aimed at attending a given spiritual level by yoga. The said submission cannot be accepted for want of positive evidence in that regard. Had the intention of the petitioner been only to help people achieve a given spiritual level by means of yoga it would not charge money from every person who attaches with the activities of the petitioner. With the evidence of this nature on record, let us find out as to whether the activities of the present petitioner are similar or comparable with the activities found in the case of ***Physical***

Research Laboratory V/s ***K.G.Sharma,*** (supra). The laboratory concerned, in the Supreme Court judgment, was a research institute established by Dr.Vikram Sarabhai for research in space and allied sciences and the same was financed mainly by Central Government by making a provision in this behalf in the union budget. The said research laboratory was not directly or indirectly carrying on any trade or business and its activities did not result into production or distribution of goods or services calculated to satisfy human wants and wishes. The knowledge acquired as a result of the research carried on by it was not sold but utilized for the benefit of the Government. The Supreme Court after considering the law on the point found that the Physical Research Laboratory (PRL institute) was one under the Government of India's department of spaces and was engaged in pure research in space science and thus proceeded to hold that the PRL institute is not an industry. The Supreme Court also endorsed the finding recorded by the Labour Court that the activities carried on by PRL institute cannot be said to be analogous to the carrying on trade, or business as it was found to be not producing or distributing services which are intended or meant for satisfying human wants and wishes as ordinarily understood. The case of the present petitioner cannot be compared with the activities of PRL institute which was considered by the Supreme Court in the above referred judgment. The finding

recorded by the Industrial Tribunal that the motive of the petitioner is to earn profit and the same stands substantiated by evidence on record. In this view of the matter I am in agreement with the view taken by the Industrial Tribunal that the petitioner is an industry within the meaning of section 2(j) of the Industrial Disputes Act and its activities are not comparable with the activities of PRL institute in the case of ***Physical Research Laboratory*** (supra).

6. **As to Point No.2:** The learned counsel for the petitioner has contended that the appropriate Government for the petitioner-industry would be the Central Government as according to the learned counsel the petitioner is carrying on its activities under the authority of the Central Government whereas according to the learned counsel for the respondent the activities of the petitioner are not being carried out under the authority of the Central Government and hence the State Government has rightly made reference to the Industrial Tribunal. The issue involved is no longer *res integra* as the same is decided by Constitution Bench judgment of the Supreme Court in the case of ***Steel Authority of India Ltd. & Others*** v/s ***National Union Water Front Workers & Others***, 2001 (91) FLR 182. The question that fell for consideration of the Supreme Court in the said judgment was as to what is the criteria to be applied to determine as to whether which of the Government would be the appropriate Government for making of

reference. After noticing conflict of opinion, between different benches including two, three Judges-Bench of the Supreme Court on the interpretation of the expression “appropriate Government” in section 2 (1)(a) of the Contract Labour (Regulation & Abolition) Act, 1970 and in section 2(a) of the Industrial Disputes Act a reference was made to larger bench and the bench of five Judges have decided the issue. The view taken by two Judges-Bench of the Supreme Court in the case of ***Heavy Engineering Mazdoor Union*** v/s ***State of Bihar & Others,*** 1969 II LLJ 549 equivalent to AIR 1970 SC 82 was followed by three Judges-Bench in the case of ***Hindustan Aeronautics Ltd.*** v/s ***Rashtriya Mill Mazdoor Sangh***. Whereas the said view was departed from by three Judges-Bench in the case of ***Air India Statutory Corporation & Ors.*** V/s ***United Labour Union & Ors.*** The larger bench in the case of ***Steel Authority of India Ltd. & Ors.*** V/s ***National Union Water Front Workers & Ors.,*** (supra) upheld the view taken in the case of ***Heavy Engineering Mazdoor Union***, and ***Hindustan Aeronautics Ltd.*** (supra) and rejected the view taken in ***Air India***'s case. The Supreme Court has interpreted the phrase “any industry carried on by or under the authority of Central Government” and to be more precise the later part of it viz. “under the authority of Central Government”. In para 28 of its judgment the Supreme Court made the following observations:

"28. From the above discussion, it follows that the phrase "any industry carried on under the authority of the Central Government" implies an industry which is carried on by virtue of, pursuant to, conferment of, grant of or delegation of power or permission by the Central Government to a Central Government company or other government company/undertaking. To put it differently, if there is lack of conferment of power or permission by the Central Government to a Government company or undertaking, it would disable such a company/undertaking to carry on the industry in question."

After holding that for interpretation of the said phrase support cannot be drawn from finding out as to whether the establishment is an undertaking which falls within the meaning of "State or other authorities" in article 12 of the Constitution it proceeded to hold in para 36 which is concluded in para 37 thus:

"36. .... In our view, the test which is determinative is: whether the industry carried on by the establishment in question is under the authority of the Central Government? Obviously, there cannot be one test for one part of definition of `establishment' and another test for another part. Thus, it is clear that the criterion is whether an undertaking/instrumentality of Government is carrying on an

industry under the authority of the Central Government and not whether the undertaking is instrumentality or agency of the Government for purposes of Article 12 of the Constitution, be it of Central Government or State Government."

37. There cannot be any dispute that all the Central Government companies with which we are dealing here are not and cannot be equated to Central Government though they maybe `State' within the meaning of Article 12 of the Constitution. We have held above that being the instrumentality or agency of the Central Government would not by itself amount to having the authority of the Central Government to carry on that particular industry. Therefore, it will be incorrect to say that in relation to any establishment of a Central Government company/undertaking, the appropriate Government will be the Central Government. To hold that the Central Government is "the appropriate Government" in relation to an establishment, the court must be satisfied that the particular industry in question is carried on by or under the authority of the Central Government. If this aspect is kept in mind it would be clear that the Central Government will be the "appropriate Government" under the CLRA Act and the I.D. Act provided the industry in question is carried on by a Central Government company/an undertaking

> under the authority of the Central Government. Such an authority may be conferred, either by a statute or by virtue of relationship of principal and agent or delegation of power. Where the authority, to carry on any industry for or on behalf of the Central Government, is conferred on the Government company/any undertaking by the statute under which it is created, no further question arises. But, if it is not so, the question that arises is whether there is any conferment of authority on the Government company/any undertaking by the Central Government to carry on the industry in question. This is a question of fact and has to be ascertained on the facts and in the circumstances of each case."

It is as such clear that an authority may be conferred either by a statute or by virtue of relationship of principal and agent or delegation of power. In the present case no such authority has been conferred by the statute and the petitioner does not even claim an authority as an agent of the Central Government. The petitioner cannot bind the Central Government as an agent and if this be so, then it is for the petitioner to show that there is any conferment of authority on it to carry on the industry in question and as held by the Apex Court this is a question of fact. The Industrial Tribunal has rightly held that the petitioner who is carrying on some of its activities by receiving grants

from the Central Government cannot be termed as an industry which is being run under the authority of the Central Government. There is no authority expressed or implied from the Central Government for various activities of the petitioner and thus the point needs to be answered against the petitioner. Nomination of two persons on the Governing Body of the petitioner by the Central Government or for that matter inspection and auditing of the accounts by the Central Auditor General's Office cannot bestow on the petitioner the status of an industry being carried on under the authority of the Central Government. Learned counsel for the petitioner has also placed reliance on some judgments of the Bombay High Court but I choose not to refer to them as the said judgments follow the law laid down in Air India's case which view has been rejected in a decision rendered in the case of Steel Authority of India's case.

7. **As to Point No.3:** It is next contended by the learned counsel for the petitioner that the Industrial Tribunal has erred in law in holding that the retrenchment effected is in breach of Rule 81 of the Industrial Disputes (Bombay) Rules. Having regard to the pleadings of the respondent this issue has to facets viz; (i) that the petitioner ought to have prepared a combined seniority list of all its employees in a given cadre who were working in at Lonavala (Head Office) and its branches at Delhi, Bhopal and Rajkot. The grievance of the respondent

is that the seniority list of employees working at Lonavala alone was displayed and for no reason or cause the employees from Delhi, Bhopal and Rajkot are not included in the seniority list. The other objection is to the effect that initial dates of appointment of the employees, whose names are covered in the list, were not displayed. The Industrial Tribunal has upheld both the contentions of the respondent and found fault with the seniority list so published as violative of rule 81. The intention behind mandating publication of seniority list under Rule 81 is to secure compliance of principle of last come first go and to facilitate retrenchment of junior most employee. In a given cadre the seniority list is expected to be correctly and fully prepared and displayed so as to enable the aggrieved party to raise objection thereto. Rule 81 of the Industrial Disputes (Bombay) Rules reads thus:

> "81. **Maintenance of seniority list of workmen.**- The employer shall prepare a list of all workmen in the particular category from which retrenchment is contemplated arranged according to the seniority of their service in that category and cause a copy thereof to be posted on a notice board in a conspicuous place in the premises of the industrial establishment at least seven days before the actual date of retrenchment."

The seniority list was published at Exh.C-62 whereas the final list came to be published at Ex.C-52. It is the case of the petitioner that no one

objected to the provisional list and no objections were raised, whereas according to the respondent the employees were denied fair opportunity to object to the seniority list as in the first place it did not include the names of the employees working in branches and in the second place the list did not have material particulars to raise valid objections. Touching the first submission that non inclusion of names of employees working at branches has vitiated the seniority list at Ex.62, let us examine the pleadings. It is categorically pleaded in para 7 by respondent before the Industrial Tribunal in its statement of claim that the said establishment of the petitioner at Lonavala has its branches at Delhi, Bhopal and Rajkot. It is then stated that the employees of the petitioner are appointed at Lonavala and thereafter they are transferred to the respective branches and hence common seniority list of all the employees working at all the places ought to have been prepared by the petitioner and retrenchment ought to have been made on the basis of the said common seniority list. In reply filed before the Industrial Tribunal by the petitioner the above referred contentions are replied in the following manner:

> "Not a single person's services have been terminated, were transferred from any other branch to Lonavala. They were appointed at Lonavala and therefore their seniority needs to be considered at Lonavala."

What is relevant to notice is that the averments touching the transfer are not at all denied. Just because no employee sought to be retrenched is transferred from any of the branches to Lonavala cannot be a reason for not preparing a combine seniority list of persons working in given cadre if the services were transferable, whether as a matter of fact they were transferred or otherwise. It is not the case of the petitioner that no employee appointed at a given place is transferred to any other branch and vice-versa. If services of an employee working in cadre are transferable then obviously a combine seniority list ought to have been prepared and which has admittedly not been done. The petitioner's witness by name Sinha admits the existence of branches, the other witness Tiwari examined by the petitioner has deposed in his cross examination that it is true that in the year 1990 petitioner entered into an agreement with the respondent-union in respect of transfer of one Mr.Sakhalkar and Bhagwat. It is also admitted by the said witness that Sakhalkar was negotiating on behalf of respondent-union in relation to transfer. There is no contrary evidence which goes to indicate absence of transfer policy from one place to another. Once it is found that employees were in the past transferred and that their services were transferable in their cadre/category then the seniority list has to be prepared of employees working in that cadre/category. In the present case there is

hardly any categorical evidence available but the same may be because of petitioner's failure to categorically deny the averments made in the statement of claim. Petitioner's justification for not preparing combine seniority list of workers working at all the places in a given cadre, is wholly unjustified in as much as the petitioner has submitted that because none of the retrenched persons were transferred from the branches to Lonavala the names of the employees working in the same cadre at other places were not included in the seniority list, is wholly unacceptable and illogical. The Industrial Tribunal has recorded the finding in favour of the respondent in this regard. The said finding being finding of fact and as it proceeds to take possible view of the matter, the same does not call for any interference at the hands of this Court. Touching other limb of grievance made by the respondent about seniority list published at Ex.C-62 is lacking material particulars in regard to initial date of appointment has also been accepted by the Industrial Court. In paras 53 and 54 of its judgment the Industrial Tribunal has dealt with this aspect of the matter. The Industrial Tribunal has found that the seniority list was displayed on the notice board which is at Ex.C-62 and first column in the said list is the date of initial joining without scale is given. The second column reveals the date of regularization/joining the services in the scale. On that basis

the Industrial Tribunal has proceeded to hold that the initial date of joining and the date of joining in the scale are distinct and as in relation to some of the employees the date of initial appointment was not specified in the list it has found the seniority list to be defective and in violation of Rule 81 of the Industrial Disputes Rules. The list has been found to be faulty on yet another ground in as much as one of the retrenched employee by name K.G.Banyal is senior steno whereas one G.N.Murthy is junior steno. Retention of Mr.Murthy in service and retrenchment of Mr.Banyal has been found to be wrong. Learned counsel for the petitioner explains that Mr.Banyal was working in different cadre/category i.e. of senior steno and the nomenclature `junior steno' does not reflect their inter se seniority but goes to de note separate cadre. As the petitioner wanted to retrench a person manning the post of senior steno it has chosen to retrench him and retain in service Mr.Murthy, junior steno. The explanation of the learned counsel for the petitioner deserves to be accepted which goes to explain that a junior person is not retained in service and a senior retrenched. The Industrial Tribunal has erred in holding against the petitioner that retrenchment of `senior steno' is bad because `junior steno' is retained in service. As stated herein above the term `senior' and `junior' does not refer to their inter se seniority but refers to different cadres.

8. In so far as the finding recorded by the Industrial Tribunal about date of initial appointment and the date on which an employee is granted regularization/appointment in the scale, it is submitted by the learned counsel that some of the employees were appointed initially on ad-hoc basis without granting them scale whereas some other employees were directly appointed in the prescribed pay scale and thus in relation to those who were directly appointed in the scale there would not be any date available of their initial appointment (which is available in regard to other employees who were initially appointed ad-hoc and not in the prescribed scale of pay). The discrepancy noticed by the Industrial Tribunal is only with regard to absence of dates of initial appointment of some of the employees which has led to a conclusion that the seniority list is illegally prepared. Having regard to the explanation of the petitioner and in the absence of any evidence touching this aspect of the matter on behalf of the respondent it cannot be said that the seniority list displayed at Exh.C-62 which assumed finality by its publication at Ex.C-52 is illegal. Respondent has neither cross examined the witness of the petitioner touching this aspect of the matter viz. list being defective on account of lack of material particulars nor has it led any evidence in that regard. The finding recorded by the Industrial Tribunal about the seniority list being in breach of Rule 81 of the act on account of discrepancies in the list at

Ex.C-62 is wholly unsustainable. The finding of the Industrial Tribunal being patently illegal it needs to be interfered with and is set aside. However it is made clear that the finding about the list being in violation of Rule 81 on account of non inclusion of names of employees working at the branches is sustained and upheld.

9. **As to Point No.4:** The petitioner questions the locus of the respondent to raise dispute by placing reliance on a judgment in the case of ***Mukund Employees Union*** v/s ***Mukund Iron & Steel Workers Ltd.*** 1987 (5) FIR 507. The question that fell for consideration before the division bench was as to whether registration would stand restored from the point of its cancellation if the order of cancellation of registration is itself withdrawn. The division bench in the said case held that an order of cancellation of registration cannot be revoked or withdrawn. The Court held that in the absence of any statutory provision the only remedy for the Union would be either to go in appeal or apply for re -registration. Per contra the learned counsel for the respondent has placed reliance on a judgment of another division bench in the case of ***Association of Engineering Workers*** v/s ***Dock-yard Labour Union & Ors.,*** 1991 (ii) CLR 214 equivalent to 1995 (supp.) 4 SCC 544. This judgment after considering the law laid down in the earlier judgment referred to herein above, has held that if an order of cancellation of registration is found to have

been issued by mistake the order wrongly passed can be withdrawn by the authority and on withdrawal or revocation of order of cancellation of registration the same would restore the registration from the date of its cancellation. The earlier judgment has been distinguished. The registration of the respondent-trade union was canceled on 26.12.1996 and the order of cancellation of registration was withdrawn on 25.6.1997. It is the case of the respondent that the order of cancellation of registration was passed under mistaken belief that the respondent has not submitted returns and hence at a later point of time when it was pointed out to the concerned authority that the cancellation of registration was wrongly made it has withdrawn the order. The Division Bench in **Association of Engineering Workers'** case (supra) has held that if wrong order has been passed under mistaken assumption the said order would be without jurisdiction and Registrar would have jurisdiction to revoke the said order and the revocation in turn would have an effect of restoration of registration from the point of time it was canceled. In the present case perusal of the communication from the Registration dated 25.6.1997 which is placed on record of this petition by the learned counsel for the respondent, reveals that the registration was canceled on account of failure to submit the returns within stipulated period. The said communication then recites that on perusal of the application by the

Union and the annexures thereto it is presumed that the returns were in fact submitted within time and hence the communication dated 26.12.1996 canceling the registration of trade union at No.2231 stands withdrawn and the registration of the respondent-union shall continue as before. It is thus evident that as the Registrar realized that the respondent had complied with the requirement of timely submission of the returns it has withdrawn the order of cancellation of registration and further made it clear that the registration at given number shall continue to be valid. It is thus clear that as the order of cancellation has been withdrawn, on realizing that the same was mistakenly issued, the present respondent's case squarely stands covered by the judgment of the Division Bench in the case of Association of Engineering Workers. Thus I have no hesitation in concluding that the respondent did have locus to raise dispute even during the period when registration was canceled as the same came to be restored with effect from the date of cancellation, on withdrawal of letter of cancellation.

10. **As to Point No.5:** The last question that needs to be answered is as to whether the retrenchment of employees is in good faith as claimed by the petitioner or is it mala fide action resorted to by the petitioner on account of various complaints made by the respondent. The petitioner has tried to contend that since the year

1994-95 the petitioner was facing acute financial hardship as the Government was not reimbursing the petitioner by releasing grants towards deficit and hence the ultimate decision of retrenchment had to be taken to reduce the financial burden. Per contra it is the case of the respondent that on account of various complaints made by it and the workmen to the Central Government and the State Government the petitioner was compelled to implement the reservation policy and correct its administrative decisions. It is an admitted position that on account of various complaints made by the respondent Central Government had withheld the grants for quite sometime. The complaints made by the respondent in regard to the administration of the petitioner were mainly touching two aspects; (i) non implementation of reservation policy and (ii) granting extension to one Mr.Tiwari and continuing him in service even after he attained the age of superannuation. The petitioner, with a view to establish that the decision was prompted on account financial hardship was required to place on record the break up of income and expenditure of all its departments. For reasons best known to the petitioner, the petitioner has not placed on record the income and expenditure of the hospital which according to the respondent generates maximum income for the petitioner. Unless and until the petitioner places on record its income and expenditure from all its sources it would be difficult to find out as

to whether the petitioner was really constrained to retrench the employees because of financial hardship or otherwise. The Industrial Tribunal has, while accepting the case of the respondent, held that retrenchment of the employees is mala fide and with oblique motive. It has also held that the retrenchment order was not issued in good faith. The Industrial Tribunal, doubting the bonafides of the petitioner, has found that as the Government had withheld/stopped grants to the petitioner, the petitioner vindictively issued retrenchment orders and hence held that the same are illegal. The petitioner has not placed on record enough material and evidence to justify that since the year 1994-95 petitioner was facing financial hardship and in order to lessen the financial burden decision has been taken in good faith to retrench the employees. In the absence of details in regard to receipts and expenditure from the hospital it is not possible to test the correctness of the submission made by the learned counsel on behalf of the petitioner that the action of retrenchment is bonafide. The Industrial Tribunal had to record a finding having regard to the conflicting claims of rival parties and taking possible view of the matter the Industrial Tribunal has held that the impugned action of retrenchment was mala fide and illegal. As the said finding is based on evidence on record which goes to take a possible view the same cannot be interfered with moreso in the absence of any details of receipts and expenditure from

the hospital activities of the petitioner. Hence the last submission as well falls to the ground.

11. In the result writ petition fails and is dismissed. Rule discharged with no order as to costs. At this stage learned counsel for the petitioner seeks stay of the judgment for a period of eight weeks and makes a further request that the interim arrangement of payment of 75% of the last drawn wages to 10 workmen be continued as the petitioner intends to file an appeal. The prayer made is reasonable and thus the same is granted. Hence interim arrangement operating hereto before shall continue for a period of eight weeks. This judgment shall remain stayed for the said period of eight weeks.